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**UNITED STATES DISTRICT COURT****EASTERN DISTRICT OF TEXAS**

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ERIC WATKINS,

Petitioner,

*versus*

JODY UPTON,

Respondent.

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CIVIL ACTION NO. 1:09-CV-433

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Eric Watkins, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning the petition. The magistrate judge recommends the petition be dismissed without prejudice.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. After careful consideration, the court concludes petitioner's objections are without merit. As petitioner's claim does not challenge the fact or duration of his confinement, it cannot be asserted in a petition for writ of habeas corpus. *See Spina v. Aaron*, 821 F.2d 1126, 1128 (5<sup>th</sup> Cir. 1987).

## ORDER

Accordingly, petitioner's objections to the Report and Recommendation are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing the petition.

SIGNED at Beaumont, Texas, this 10th day of November, 2010.

A handwritten signature in black ink, reading "Marcia A. Crone", is positioned above a horizontal line.

MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE